

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.5246 OF 1982

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed
to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy
of the judgment ?
 4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950, or any order made
thereunder ?
 5. Whether it is to be circulated to the Civil
Judge?

KIRITSINH BHAVUBHA CHUDASAMA
VERSUS
GAMBHIRSINH MOHABATSINH CHUDASAMA

Appearance:

Shri A.H. Mehta, for the petitioner.

None present for the respondent.

Coram: S.K. Keshote,J
Date of decision:10.10.96

C.A.V. JUDGMENT

The respondent filed an application against the
petitioner before the Debt Settlement Officer, Ahmedabad,
for a declaration that the conditional sale of Survey

No.719 admeasuring 13 acres 37 gunthas by a registered conditional sale deed dated May 9, 1976 for a sum of Rs.10,000/- was in the nature of mortgage, the respondent was a small farmer and hence under the provisions of the Gujarat Rural Debtors Relief Act, 1976 (hereinafter referred to as the 'Act 1976'), the debt stood satisfied. The Debt Settlement Officer, vide its order dated 22.6.81, held that the respondent was a small agriculturist and hence he was exempted from paying the aforesaid debt of Rs.10,000/- and ordered restoration of possession of the land in question.

2. The petitioner, against the aforesaid order of Debt Settlement Officer, preferred an appeal before the District Registrar (Rural Debts), being the Appellate Authority, but the appeal came to be dismissed on 15.7.82. Hence this Special Civil Application before this Court.

3. The learned counsel for the petitioner contended that it is a case where the respondent has committed a fraud and as such all the proceedings deserve to be quashed and set aside and the order of the authorities below are to be quashed and set aside. In support of his contention, the learned counsel for the petitioner placed reliance on the decision of the Apex Court in the case of Indian Bank v. Satyam Fabrics (India) Pvt. Ltd., reported in JT 1996(7) SC 135.

4. I have given my thoughtful considerations to the submissions made by the learned counsel for the petitioner.

5. The judgment and orders of both the authorities below proceed on the premises that there was a partition on 1st June 1968 on a stamp paper of Re.1.50, whereunder recital is that the husband, the respondent herein, and his wife were not pulling on well and the wife has separated herself from him and staying with her parents, and the land bearing Survey No.721 admeasuring 7 acres and 8 gunthas were given to the wife by respondent for her and children's maintenance.

6. From the facts which have come on record and the contentions made by the petitioner before the Appellate Authority, it appears that the first child, viz. son Viramdev was born only on October 17, 1969 and therefore the story of transferring the land on a stamp paper of Re.1.50 on 1st June 1968 was a manufactured document with an intention to defraud creditors and lower authorities. The birth certificate of Viramdev is there on record at

page 17 of this petition, wherefrom it transpires that his date of birth is 17th October 1969. Nobody has put appearance on behalf of the respondent. On record, the affidavit-in-reply is also not there though affidavit-in-rejoinder is there. Moreover, nobody is present on behalf of respondent to say that whether reply is filed or not. Merely giving of the copy of reply to the petitioner may not amount to filing of reply in the Court. It is normal practice in this Court that though copies of reply are given to the counsel of opposite side, but the same are not filed on record of proceedings and are submitted when the matter is taken up for hearing. The document of date of Birth of Viramdev is a better piece of evidence and this document creates a serious suspicion in the mind of Court. The partition appears to be a manufactured document with the intent and purpose to get benefit of the Act 1976. When the child was not born on the date of partition, the action of mentioning the fact that the land of Survey No.721 has been given in lieu of maintenance of wife and children appears to be fabricated. After excluding the aforesaid land which has been stated to be given by the respondent to his wife, he can only be treated as marginal agriculturist and not otherwise. The document of transfer of land in favour of the petitioner is a registered document and I find prima facie sufficient merits in the contention of the learned counsel for the petitioner that the document of partition has been manufactured to get benefits by the respondent. Though, prima-facie, it appears to be a case of fabricated document of partition, I consider it to be appropriate not to give any final verdict on the issue in question, and remand the matter back to the Appellate Authority to decide the appeal afresh after taking into consideration all these facts and the decision of the Apex Court in the case of Indian Bank v. Satyam Fabrics (India) Pvt. Ltd. (supra).

7. In the result, this petition succeeds in part. The orders of the Debt Settlement Officer and the Appellate Authority, annexures 'A' and 'B', are set aside and the matter is remanded back to the original authority to decide the same afresh in accordance with law and subject to the observations made in this judgment. Rule made absolute with no order as to costs.

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(sunil)